

File No. 568

(Reprint of File No. 433)

Substitute House Bill No. 5730
As Amended by House Amendment
Schedules "A" and "B"

Approved by the Legislative Commissioner
April 17, 1998

AN ACT CONCERNING PROBATE MATTERS.

Be it enacted by the Senate and House of
Representatives in General Assembly convened:

1 Section 1. Subsection (g) of section 19a-265
2 of the general statutes is repealed and the
3 following is substituted in lieu thereof:

4 (g) A petition by a director of health for a
5 commitment order pursuant to subdivision (5) of
6 subsection (c) of this section shall be heard by
7 the probate court for the district in which the
8 subject of such petition resides within three
9 business days of receipt of such petition [The]
10 OR, IF A MOTION IS MADE FOR APPOINTMENT OF A
11 THREE-JUDGE COURT, WITHIN THREE BUSINESS DAYS OF
12 THE FILING OF SUCH MOTION. UPON THE MOTION OF THE
13 RESPONDENT OR OF THE JUDGE OF PROBATE FOR
14 APPOINTMENT OF A THREE-JUDGE COURT, THE Probate
15 Court Administrator shall appoint a three-judge
16 court from among the several judges of probate to
17 conduct the hearing. Such three-judge court shall
18 consist of at least one judge who is an
19 attorney-at-law admitted to practice in this
20 state. The judge of probate having jurisdiction
21 under the provisions of this section shall be a
22 member, provided such judge may disqualify

23 himself, in which case all three members of such
24 court shall be appointed by the Probate Court
25 Administrator. Such three-judge court when
26 convened shall be subject to all of the provisions
27 of law as if it were a single-judge court. The
28 involuntary confinement of a person under this
29 section BY A THREE-JUDGE COURT shall not be
30 ordered by the court without the vote of at least
31 two of the three judges convened hereunder. The
32 judges of such court shall designate a chief judge
33 from among their members. All records for any case
34 before the three-judge court shall be maintained
35 by the court of probate having jurisdiction over
36 the matter as if the three-judge court had not
37 been appointed. The court shall cause such
38 advanced notice as it directs thereof to be given
39 to the person who is the subject of the order and
40 such other persons as it may direct. The hearing
41 shall be held to determine: (1) If the person has
42 active tuberculosis; (2) if the person is
43 unwilling or unable to adhere to an appropriate
44 prescribed course of treatment for tuberculosis;
45 (3) if efforts have been made to educate and
46 counsel the person about the need to complete the
47 course of treatment; (4) if reasonably appropriate
48 enablers and incentives have been provided to the
49 person to facilitate the completion of treatment
50 by that person; (5) if the person has a
51 demonstrated pattern of persistent nonadherence to
52 treatment for tuberculosis; (6) if commitment for
53 the purposes of completion of the prescribed
54 course of treatment for active tuberculosis is
55 necessary to prevent the development of
56 drug-resistant tuberculosis organisms; and (7)
57 whether the order is necessary and is the least
58 restrictive available to protect the public health
59 in that other less restrictive alternatives to
60 encourage that person's adherence to the
61 prescribed course of treatment for tuberculosis
62 have failed. The Probate Court may issue a warrant
63 for the apprehension of a person who is the
64 subject of an order for commitment, and a police
65 officer for the town in which such court is
66 located, or if there is no such police officer
67 then the state police or such other officer as the
68 court may determine, shall deliver the person to
69 the place for confinement as determined by the

70 health director and as specified in subsection (d)
71 of this section.

72 Sec. 2. Section 46b-172a of the general
73 statutes, as amended by section 24 of public act
74 97-7 of the June 18 special session, is repealed
75 and the following is substituted in lieu thereof:

76 (a) Any person claiming to be the father of a
77 child born out of wedlock may at any time but no
78 later than sixty days after the date of notice
79 under section 45a-716, file a claim for paternity
80 with the court of probate for the district in
81 which either the mother or the child resides, on
82 forms provided by such court. The claim shall
83 contain the claimant's name and address, the name
84 and last-known address of the mother and the month
85 and year of the birth or expected birth of the
86 child. Within five days after the filing of a
87 claim for paternity, the judge of the court of
88 probate shall cause a certified copy of such claim
89 to be mailed by certified mail to (1) the vital
90 records section of the Department of Public Health
91 and (2) to the mother or prospective mother of
92 such child at the last-known address shown on the
93 claim for paternity. The claim for paternity shall
94 be admissible in any action for paternity under
95 section 46b-160, and shall estop the claimant from
96 denying his paternity of such child and shall
97 contain language that he acknowledges liability
98 for contribution to the support and education of
99 the child after its birth and for contribution to
100 the pregnancy-related medical expenses of the
101 mother.

102 (b) If a claim for paternity is filed by the
103 father of any minor child born out of wedlock, the
104 court of probate shall schedule a hearing on such
105 claim, send notice of the hearing to all parties
106 involved and proceed accordingly.

107 (c) The child shall be made a party to the
108 action. Said child shall be represented by a
109 guardian ad litem appointed by the court AND
110 COMPENSATED in accordance with section 45a-708.
111 [Payment shall be made in accordance with such
112 section from the Probate Court Administration
113 Fund.]

114 (d) In the event that the mother or the
115 claimant father is a minor, the court shall
116 appoint a guardian ad litem to represent him or
117 her in accordance with the provisions of section

118 45a-708. [Payment shall be made in accordance with
119 said section from the Probate Court Administration
120 Fund.] THE GUARDIAN AD LITEM SHALL BE COMPENSATED
121 IN ACCORDANCE WITH SECTION 45a-708.

122 (e) Upon the motion of the putative father,
123 the mother, or his or her counsel, or the judge of
124 probate having jurisdiction over such application,
125 filed not later than three days prior to any
126 hearing scheduled on such claim, the Probate Court
127 Administrator shall appoint a three-judge court
128 from among the several judges of probate to hear
129 such claim. Such three-judge court shall consist
130 of at least one judge who is an attorney-at-law
131 admitted to practice in this state. The judge of
132 the court of probate having jurisdiction over such
133 application under the provisions of this section
134 shall be a member, provided such judge may
135 disqualify himself in which case all three members
136 of such court shall be appointed by the Probate
137 Court Administrator. Such three-judge court when
138 convened shall have all the powers and duties set
139 forth under sections 17a-75 to 17a-83, inclusive,
140 17a-450 to 17a-484, inclusive, 17a-495 to 17a-528,
141 inclusive, 17a-540 to 17a-550, inclusive, 17a-560
142 to 17a-576, inclusive, and 17a-615 to 17a-618,
143 inclusive, and shall be subject to all of the
144 provisions of law as if it were a single-judge
145 court. The judges of such court shall designate a
146 chief judge from among their members. All records
147 for any case before the three-judge court shall be
148 maintained in the court of probate having
149 jurisdiction over the matter as if the three-judge
150 court had not been appointed.

151 (f) By filing a claim under this section, the
152 putative father submits to the jurisdiction of the
153 court of probate.

154 (g) Once alleged parental rights of the father
155 have been adjudicated in his favor under
156 subsection (b) of this section, or acknowledged as
157 provided for under section 46b-172, his rights and
158 responsibilities shall be equivalent to those of
159 the mother, including those rights defined under
160 section 45a-606. Thereafter, disputes involving
161 custody, visitation or support shall be
162 transferred to the Superior Court under chapter
163 815j, except that the probate court may enter a
164 temporary order for custody, visitation or support
165 until an order is entered by the Superior Court.

166 (h) Failing perfection of parental rights as
167 prescribed by this section, any person claiming to
168 be the father of a child born out of wedlock (1)
169 who has not been adjudicated the father of such
170 child by a court of competent jurisdiction, or (2)
171 who has not acknowledged in writing that he is the
172 father of such child, or (3) who has not
173 contributed regularly to the support of such child
174 or (4) whose name does not appear on the birth
175 certificate shall cease to be a legal party in
176 interest in any proceeding concerning the custody
177 or welfare of the child, including but not limited
178 to guardianship and adoption, unless he has shown
179 a reasonable degree of interest, concern or
180 responsibility for the child's welfare.

181 (i) Notwithstanding the provisions of this
182 section, after the death of the father of a child
183 born out of wedlock, a party deemed by the court
184 to have a sufficient interest may file a claim for
185 paternity on behalf of such father with the
186 probate court for the district in which either the
187 putative father resided or the party filing the
188 claim resides. If a claim for paternity is filed
189 pursuant to this subsection, the court of probate
190 shall schedule a hearing on such claim, send
191 notice of the hearing to all parties involved and
192 proceed accordingly.

193 Sec. 3. Section 45a-724 of the general
194 statutes is repealed and the following is
195 substituted in lieu thereof:

196 (a) The following persons may give a child in
197 adoption:

198 (1) A statutory parent appointed under the
199 provisions of section 17a-112, section 45a-717 or
200 section 45a-718 may, by written agreement, subject
201 to the approval of the Court of Probate as
202 provided in section 45a-727, give in adoption to
203 any adult person any minor child of whom he is the
204 statutory parent; provided, if the child has
205 attained the age of twelve, the child shall
206 consent to the agreement.

207 (2) Subject to the approval of the Court of
208 Probate as provided in section 45a-727, any parent
209 of a minor child may agree in writing with his or
210 her spouse that the spouse shall adopt or join in
211 the adoption of the child; if that parent is (A)
212 the surviving parent if the other parent has died;
213 (B) the mother of a child born out of wedlock,

214 provided that if there is a putative father who
215 has been notified under the provisions of section
216 45a-716, the rights of the putative father have
217 been terminated; (C) a former single person who
218 adopted a child and thereafter married; or (D) the
219 sole guardian of the person of the child, if the
220 other parent's parental rights have been
221 terminated. [or the other parent has been removed
222 as guardian of the person before October 1, 1973.]

223 (3) Subject to the approval of the Court of
224 Probate as provided in section 45a-727, the
225 guardian or guardians of the person of any minor
226 child who is free for adoption in accordance with
227 section 45a-725 may agree in writing with a
228 relative that the relative shall adopt the child.
229 For the purposes of this subsection "relative"
230 shall include, but not be limited to, a person who
231 has been adjudged by a court of competent
232 jurisdiction to be the father of a child born out
233 of wedlock, or who has acknowledged his paternity
234 under the provisions of section 46b-172a, with
235 further relationship to the child determined
236 through the father.

237 (b) If all parties consent to the adoption
238 under subdivisions (2) and (3) of subsection (a)
239 of this section, then the application to be filed
240 under section 45a-727 shall be combined with the
241 consent termination of parental rights to be filed
242 under section 45a-717. An application made under
243 subdivisions (2) and (3) of subsection (a) of this
244 section shall not be granted in the case of any
245 child who has attained the age of twelve without
246 the child's consent.

247 Sec. 4. Section 45a-725 of the general
248 statutes is repealed and the following is
249 substituted in lieu thereof:

250 A minor child shall be considered free for
251 adoption and the Court of Probate may grant an
252 application for the appointment of a statutory
253 parent if any of the following have occurred: (a)
254 The child has no living parents; [(b) the parents
255 were removed as guardians of the person before
256 October 1, 1973, in accordance with the provisions
257 of Connecticut law in effect before October 1,
258 1973; (c)] (b) all parental rights have been
259 terminated under Connecticut law; [(d)] (c) (1) in
260 the case of any child from outside the United
261 States, its territories or the Commonwealth of

262 Puerto Rico placed for adoption by the
263 Commissioner of Children and Families or by any
264 child-placing agency, the petitioner has filed an
265 affidavit that the child has no living parents or
266 that the child is free for adoption and that the
267 rights of all parties in connection with the child
268 have been properly terminated under the laws of
269 the jurisdiction in which the child was domiciled
270 before being removed to the state of Connecticut;
271 or (2) in the case of any child from any of the
272 United States, its territories or the Commonwealth
273 of Puerto Rico placed by the Commissioner of
274 Children and Families or a child-placing agency,
275 the petitioner has filed an affidavit that the
276 child has no living parents or has filed in court
277 a certified copy of the court decree in which the
278 rights of all parties in connection with the child
279 have been terminated under the laws of the
280 jurisdiction in which the child was domiciled
281 before being removed to the state of Connecticut,
282 and the child-placing agency obtained guardianship
283 or other court authority to place the child for
284 adoption. If no such affidavit or certified decree
285 has been filed, then termination of parental
286 rights proceedings shall be required.

287 Sec. 5. Section 45a-175 of the general
288 statutes, as amended by section 3 of public act
289 97-90, is repealed and the following is
290 substituted in lieu thereof:

291 (a) Courts of probate shall have jurisdiction
292 of the interim and final accounts of testamentary
293 trustees, trustees appointed by the courts of
294 probate, conservators, guardians, persons
295 appointed by probate courts to sell the land of
296 minors, executors, administrators and trustees in
297 insolvency, and, to the extent provided for in
298 this section, shall have jurisdiction of accounts
299 of the actions of trustees of inter vivos trusts
300 and attorneys-in-fact acting under powers of
301 attorney.

302 (b) A trustee or settlor of an inter vivos
303 trust or an attorney-in-fact or the successor of
304 the trustee, settlor or attorney-in-fact or the
305 grantor of such power of attorney or his legal
306 representative may make application to the court
307 of probate for the district where the trustee, OR
308 ANY ONE OF THEM, or the attorney-in-fact has [his
309 or its principal] ANY place of business or to the

310 court of probate for the district where the
311 trustee or any one of them or the settlor or the
312 attorney-in-fact or the grantor of the power
313 resides or, in the case of a deceased settlor or
314 grantor, to the court of probate having
315 jurisdiction over the estate of the settlor or
316 grantor OR FOR THE DISTRICT IN WHICH THE SETTLOR
317 OR GRANTOR RESIDED IMMEDIATELY PRIOR TO DEATH for
318 submission to the jurisdiction of the court of an
319 account for allowance of the trustee's or
320 attorney's actions under such trust or power.

321 (c) (1) Any beneficiary of an inter vivos
322 trust may petition a court of probate having
323 jurisdiction under this section for an accounting
324 by the trustee or trustees. The court may, after
325 hearing with notice to all interested parties,
326 grant the petition and require an accounting for
327 such periods of time as it determines are
328 reasonable and necessary on finding that: (A) The
329 beneficiary has an interest in the trust
330 sufficient to entitle him to an accounting, (B)
331 cause has been shown that an accounting is
332 necessary, and (C) the petition is not for the
333 purpose of harassment.

334 (2) A court of probate shall have jurisdiction
335 to require an accounting under subdivision (1) of
336 subsection (c) of this section if (A) a trustee of
337 the trust resides in its district, (B) in the case
338 of a corporate trustee, the trustee has [its
339 principal] ANY place of business in the district,
340 (C) any of the trust assets are maintained or
341 evidences of intangible property of the trust are
342 situated in the district, or (D) the settlor
343 resides in the district, OR, IN THE CASE OF A
344 DECEASED SETTLOR, RESIDED IN THE DISTRICT
345 IMMEDIATELY PRIOR TO DEATH.

346 (3) As used in subdivision (1) of subsection
347 (c) of this section, "beneficiary" means any
348 person currently receiving payments of income or
349 principal from the trust, or who may be entitled
350 to receive income or principal or both from the
351 trust at some future date, or the legal
352 representative of such person.

353 (d) The action to submit an accounting to the
354 court, whether by an inter vivos trustee or
355 attorney acting under a power of attorney or
356 whether pursuant to petition of another party,
357 shall not subject the trust or the power of

358 attorney to the continuing jurisdiction of the
359 probate court.

360 (e) If the court finds such appointment to be
361 necessary and in the best interests of the estate,
362 the court upon its own motion may appoint an
363 auditor to be selected from a list provided by the
364 Probate Court Administrator, to examine accounts
365 over which the court has jurisdiction under this
366 section, except those accounts on matters in which
367 the fiduciary or cofiduciary is a corporation
368 having trust powers. The Probate Court
369 Administrator shall promulgate regulations in
370 accordance with section 45a-77 concerning the
371 compilation of a list of qualified auditors. Costs
372 of the audit may be charged to the fiduciary, any
373 party in interest and the estate, in such
374 proportion as the court shall direct if the court
375 finds such charge to be equitable. Any such share
376 may be paid from the fund established under
377 section 45a-82, subject to the approval of the
378 Probate Court Administrator, if it is determined
379 that the person obligated to pay such share is
380 unable to pay or to charge such amount to the
381 estate would cause undue hardship.

382 (f) Upon the allowance of any such account,
383 the court shall determine the rights of the
384 fiduciaries or the attorney-in-fact rendering the
385 account and of the parties interested in the
386 account, subject to appeal as in other cases. The
387 court shall cause notice of the hearing on the
388 account to be given in such manner and to such
389 parties as it directs.

390 (g) In any action under this section, the
391 Probate Court shall have, in addition to powers
392 pursuant to this section, all the powers available
393 to a judge of the Superior Court at law and in
394 equity pertaining to matters under this section.

395 Sec. 6. Section 45a-151 of the general
396 statutes is repealed and the following is
397 substituted in lieu thereof:

398 (a) Upon application by executors, guardians,
399 conservators, administrators, trustees in
400 insolvency and trustees appointed, or whose
401 appointment has been approved, by the Court of
402 Probate, the court may, after [public] notice and
403 hearing, authorize such fiduciaries to compromise
404 and settle any doubtful or disputed claims or
405 actions, or any appeal from probate in favor of or

406 against the estates or persons represented by
407 them.

408 (b) In order to accomplish such compromise or
409 settlement, the court may authorize the
410 conveyance, with or without requiring a bond, of
411 the whole or any part of, or any easement or other
412 interest in, any real property situated in this
413 state forming part of the trust estate or owned by
414 any such trustee, executor or administrator or
415 owned by any deceased person, ward or incapable
416 person for whom such an executor, guardian,
417 conservator or administrator was appointed.

418 Sec. 7. Section 45a-376 of the general
419 statutes is repealed and the following is
420 substituted in lieu thereof:

421 The Court of Probate shall [direct the
422 fiduciary of the estate of a deceased person which
423 is represented to be insolvent to publish
424 newspaper notice and to give notice to such
425 persons as the court may direct to appear if they
426 see cause before the court, at a time and place
427 appointed by it and designated in such notice, to
428 be heard relative to such representation] CAUSE A
429 NOTICE OF THE ALLEGED INSOLVENCY OF AN ESTATE, OF
430 THE RIGHT OF INTERESTED PERSONS TO BE HEARD
431 RELATIVE TO THE REPRESENTATION OF INSOLVENCY, AND
432 OF THE TIME, DATE AND PLACE OF HEARING, TO BE (1)
433 PUBLISHED IN A NEWSPAPER HAVING A GENERAL
434 CIRCULATION IN THE PROBATE DISTRICT, AND (2) GIVEN
435 TO SUCH INTERESTED PERSONS AS THE COURT MAY
436 DIRECT. After hearing, the court shall determine
437 whether such estate shall be declared insolvent
438 and shall send a copy of the decree to all persons
439 in interest.

440 Sec. 8. Section 45a-144 of the general
441 statutes is repealed and the following is
442 substituted in lieu thereof:

443 (a) Any person claiming to be aggrieved by the
444 breach of a probate bond, as representative of the
445 estate in connection with which the bond was
446 given, or in his own right or in the right of
447 himself and all others having an interest in the
448 estate, may bring an action IN THE SUPERIOR COURT
449 OR MAY APPLY TO THE COURT OF PROBATE IN WHICH THE
450 BOND WAS GIVEN to recover for the breach in his
451 own name. [under the following conditions: (1)
452 Before bringing the action, the person shall
453 secure the consent of the judge of the court of

454 probate in which the bond was given; (2) if the
455 probate judge refuses to grant permission, the
456 person may make written application to a judge of
457 the Superior Court before which the proposed
458 action will be returnable. Upon receipt of the
459 application the Superior Court judge shall issue a
460 rule to show cause why permission should not be
461 granted, specifying a time when, and place where,
462 the matter will be heard and directing that it be
463 served in a manner which he deems proper, upon the
464 representative of the estate, if he is not the
465 applicant, and upon other persons who appear to
466 have an interest in the matter. If the judge, upon
467 hearing, finds that just cause exists for the
468 bringing of the action, he shall grant permission
469 to the applicant to bring it.]

470 (b) If [, upon] an application IS made OR AN
471 ACTION IS BROUGHT by one not acting as a
472 representative of the estate [,] AND the judge
473 concludes that the action ought to be prosecuted,
474 OR THE PROCEEDING OUGHT TO BE MAINTAINED, on
475 behalf of all persons interested in the estate in
476 connection with which the bond was given, [he] THE
477 JUDGE may order that [, if] the action [is brought
478 by the applicant, it] shall be brought, OR THE
479 PROCEEDING SHALL BE MAINTAINED, on behalf of all
480 such persons; but, in that event, such persons
481 need not be named in the writ, [or] complaint OR
482 APPLICATION.

483 (c) [When permission to bring the action is
484 granted to the representative of the estate or to
485 one acting on behalf of himself and all others
486 interested in the estate, the] THE judge shall
487 require that the applicant OR THE PERSON BRINGING
488 THE ACTION give a bond, with sufficient surety, in
489 an amount acceptable to [him] THE JUDGE, in the
490 nature of a probate bond. The bond shall be
491 conditioned upon the applicant's OR PLAINTIFF'S
492 well and truly accounting for any moneys recovered
493 in the action OR PROCEEDING and for his doings in
494 connection with the action OR PROCEEDING and with
495 the securing of payment of any moneys adjudged to
496 be due. [If permission to bring the action is
497 granted by a judge other than the judge of
498 probate, the] THE bond shall be [transmitted]
499 FILED, with the endorsement of its acceptance,
500 [to] IN the court of probate in which the estate
501 is in settlement. [, and shall be filed there.] If

502 THE APPLICATION IS MADE OR the action is brought
503 by a representative of the estate and the judge
504 deems the bond already given by him sufficient to
505 cover any amount which may be recovered in the
506 action OR PROCEEDING, no additional bond need be
507 required.

508 (d) The plaintiff in any action brought by
509 him, OR THE APPLICANT IN ANY PROCEEDING COMMENCED
510 BY HIM, as representative of the estate or on his
511 behalf and that of all persons interested in it
512 shall account for any moneys recovered to the
513 court of probate in which the estate is in
514 settlement. The court may allow to the APPLICANT
515 OR plaintiff a reasonable sum for his
516 disbursements and services in the action OR
517 PROCEEDING and in any subsequent proceedings to
518 enforce payment of any sum recovered, to be paid
519 from the amount recovered or by the estate.

520 Sec. 9. Section 17a-11 of the general
521 statutes, as amended by section 5 of public act
522 97-272, is repealed and the following is
523 substituted in lieu thereof:

524 (a) The commissioner may, in his discretion,
525 admit to the department on a voluntary basis any
526 child or youth who, in his opinion, could benefit
527 from any of the services offered or administered
528 by, or under contract with, or otherwise available
529 to, the department. Application for voluntary
530 admission shall be made in writing by the parent
531 or guardian of a child under fourteen years of age
532 or by such person himself if he is a child
533 fourteen years of age or older or a youth.

534 (b) A child or youth voluntarily admitted to
535 the department shall be deemed to be within the
536 care of the commissioner until such admission is
537 terminated. The commissioner shall terminate the
538 admission of any child or youth voluntarily
539 admitted to the department within ten days after
540 receipt of a written request for termination from
541 a parent or guardian of any child under fourteen
542 or from a child if fourteen years of age or over,
543 or youth, unless prior to the expiration of that
544 time the commissioner has sought and received from
545 the Superior Court an order of temporary custody
546 as provided by law. The commissioner may terminate
547 the admission of any child or youth voluntarily
548 admitted to the department after giving reasonable
549 notice in writing to the parent or guardian of any

550 child under fourteen years of age and to a child
551 over fourteen, and to any youth. Any child or
552 youth admitted voluntarily to the department may
553 be placed in, or transferred to, any resource,
554 facility or institution within the department or
555 available to the commissioner except Long Lane
556 School, provided the commissioner shall give
557 written notice to such child or youth and to the
558 parent or guardian of the child of his intention
559 to make a transfer at least ten days prior to any
560 actual transfer, unless written notice is waived
561 by those entitled to receive it, or unless an
562 emergency commitment of such child is made
563 pursuant to section 17a-502.

564 (c) Not more than one hundred twenty days
565 after admitting a child or youth on a voluntary
566 basis, the department shall petition the Probate
567 Court FOR THE DISTRICT IN WHICH A PARENT OR
568 GUARDIAN OF THE CHILD OR YOUTH RESIDES for a
569 determination as to whether continuation in care
570 is in the child's best interest and, if so,
571 whether there is an appropriate case service plan.
572 Upon receipt of such application, the court shall
573 set a time and place for hearing to be held within
574 thirty days of receipt of the application, unless
575 continued by the court for cause shown. The court
576 shall order notice of the hearing to be given by
577 [certified mail, return receipt requested,]
578 REGULAR MAIL at least five days prior to the
579 hearing to the Commissioner of Children and
580 Families, AND BY CERTIFIED MAIL, RETURN RECEIPT
581 REQUESTED, AT LEAST FIVE DAYS PRIOR TO THE HEARING
582 TO the parents or guardian of the child and the
583 minor, if over twelve years of age. If the
584 whereabouts of the parent or guardian are unknown,
585 or if delivery cannot reasonably be effected, then
586 notice shall be ordered to be given by
587 publication. In making its determination the court
588 shall consider the items specified in subsection
589 (d) of this section.

590 (d) Not more than twelve months after a child
591 or youth is admitted to the department on a
592 voluntary basis, the commissioner shall file a
593 motion in the Probate Court FOR THE DISTRICT IN
594 WHICH A PARENT OR GUARDIAN OF THE CHILD OR YOUTH
595 RESIDES requesting a dispositional hearing on the
596 status of the child or youth. Upon receipt of such
597 motion, the court shall set a time and place for

598 hearing to be held within thirty days of receipt
599 of the motion, unless continued by the court for
600 cause shown. The court shall order notice of the
601 hearing to be given in accordance with subsection
602 (c) of this section. At the dispositional hearing,
603 all parties shall be heard and oral or written
604 reports, containing recommendations as to the best
605 interests of the child or youth may be presented.
606 In determining its order of disposition, the court
607 shall consider among other things: (1) The
608 appropriateness of the department's plan for
609 service to the child or youth and his family; (2)
610 the treatment and support services that have been
611 offered and provided to the child or youth to
612 strengthen and reunite the family; (3) if return
613 home is not likely for the child or youth, the
614 efforts that have been made or should be made to
615 evaluate and plan for other modes of care; and (4)
616 any further efforts which have been or will be
617 made to promote the best interests of the child or
618 youth. At the conclusion of the hearing, the court
619 shall, in accordance with the best interests of
620 the child or youth, enter an appropriate order of
621 disposition. The order may: (A) Direct that the
622 services being provided, or the placement of the
623 child or youth and reunification efforts, be
624 continued if the court, after hearing, determines
625 that continuation of the child or youth in
626 services or placement is in the child or youth's
627 best interests or (B) direct that the child or
628 youth's services or placement be modified to
629 reflect the child or youth's best interest. The
630 court shall possess continuing jurisdiction in
631 proceedings under this section and shall conduct a
632 further [depositional] DISPOSITIONAL hearing
633 whenever it deems necessary or desirable, but at
634 least every twelve months.

635 (e) The commissioner shall adopt regulations
636 in accordance with chapter 54 describing the
637 documentation required for voluntary admission and
638 for informal administrative case review, upon
639 request, of any denial of an application for
640 voluntary admission.

641 (f) Any person aggrieved by a decision of the
642 commissioner denying voluntary services may appeal
643 such decision through an administrative hearing
644 held pursuant to chapter 54.

645 (g) Notwithstanding any provision of sections
646 17a-1 to 17a-26, inclusive, and 17a-28 to 17a-49,
647 inclusive, to the contrary, any person already
648 under the care and supervision of the Commissioner
649 of Children and Families who has passed his
650 eighteenth birthday but has not yet reached his
651 twenty-first birthday, may be permitted to remain
652 voluntarily under the supervision of the
653 commissioner, provided said commissioner, in his
654 discretion determines that such person would
655 benefit from further care and support from the
656 Department of Children and Families.

657 (h) UPON MOTION OF ANY INTERESTED PARTY IN A
658 PROBATE COURT PROCEEDING UNDER THIS SECTION, THE
659 PROBATE COURT OF RECORD MAY TRANSFER THE FILE FOR
660 CAUSE SHOWN TO A PROBATE COURT FOR A DISTRICT
661 OTHER THAN THE DISTRICT IN WHICH THE INITIAL OR
662 DISPOSITIONAL HEARING WAS HELD. THE FILE SHALL BE
663 TRANSFERRED BY THE PROBATE COURT OF RECORD MAKING
664 COPIES OF ALL RECORDED DOCUMENTS IN THE COURT
665 FILE, CERTIFYING EACH OF THEM, AND DELIVERING THE
666 CERTIFIED COPIES TO THE PROBATE COURT TO WHICH THE
667 MATTER IS TRANSFERRED.

668 Sec. 10. Section 45a-257a of the general
669 statutes is repealed and the following is
670 substituted in lieu thereof:

671 (a) If a testator fails to provide by will for
672 the testator's surviving spouse who married the
673 testator after the execution of the will, the
674 surviving spouse shall receive the same share of
675 the estate the surviving spouse would have
676 received if the decedent left no will unless: (1)
677 It appears from the will that the omission was
678 intentional; or (2) the testator provided for the
679 spouse by transfer outside the will and the intent
680 that the transfer be in lieu of a testamentary
681 provision is shown by the testator's statements,
682 or is reasonably inferred from the amount of the
683 transfer or other evidence.

684 (b) In satisfying a share provided in
685 subsection (a) of this section, devises and
686 legacies made by the will abate in accordance with
687 section 45a-426.

688 (c) A SURVIVING SPOUSE RECEIVING A SHARE UNDER
689 THIS SECTION MAY NOT ELECT TO TAKE A STATUTORY
690 SHARE UNDER SECTION 45a-436.

691 Sec. 11. Section 45a-257e of the general

692 statutes is repealed and the following is
693 substituted in lieu thereof:

694 [The revocation of any will by divorce,
695 annulment or dissolution of marriage,] ANY WILL
696 executed on or after October 1, 1967, and prior to
697 January 1, 1997, shall be [in accordance with]
698 GOVERNED BY the provisions of section 45a-257 of
699 the general statutes, revision of 1958, revised to
700 January 1, 1995, CONCERNING THE REVOCATION OF A
701 WILL BY MARRIAGE, DIVORCE, ANNULMENT, DISSOLUTION
702 OR BIRTH OR ADOPTION OF A MINOR CHILD.

703 Sec. 12. Subsection (e) of section 1-56b of
704 the general statutes is repealed and the following
705 is substituted in lieu thereof:

706 (e) If a conservator of the estate of the
707 principal is appointed, [after the occurrence of
708 the disability or incompetence of the principal,]
709 the power of attorney shall cease at the time of
710 the appointment, and the person acting under the
711 power of attorney shall account to the conservator
712 rather than to the principal. If the principal
713 dies, the power of attorney shall cease at the
714 time of the principal's death, and the person
715 acting under the power of attorney shall account
716 to the fiduciary of the principal's estate.

717 Sec. 13. Section 1-56j of the general statutes
718 is repealed and the following is substituted in
719 lieu thereof:

720 If a conservator of the estate of the
721 principal is appointed, [after the occurrence of
722 the disability or incapacity,] the power of
723 attorney shall cease at the time of the
724 appointment and the person acting under the power
725 of attorney shall account to the conservator
726 rather than to the principal.

727 Sec. 14. Section 45a-317 of the general
728 statutes is repealed and the following is
729 substituted in lieu thereof:

730 (a) The temporary administrator or officer
731 appointed pursuant to the provisions of section
732 45a-316 shall take immediate possession of all the
733 real and personal property of the deceased,
734 collect the rents, debts and income thereof and do
735 any additional acts necessary for the preservation
736 of the estate that the court authorizes.

737 (b) Such administrator or officer may be
738 authorized by the court to sell any personal
739 property of the estate which is perishable in its

740 nature or which the court finds cannot be retained
741 to advantage, and may be further authorized to
742 make up or complete any stock or materials in an
743 unfinished state, and to continue any business, so
744 far as may be necessary for the preservation of
745 the same.

746 (c) Such administrator may be authorized by
747 the court to sell OR MORTGAGE any real property of
748 the estate.

749 (d) Such administrator or officer shall file
750 forthwith under oath an inventory of all personal
751 property of the deceased and, when ordered to do
752 so, shall exhibit to the court an account of his
753 actions.

754 (e) Such administrator or officer may be
755 removed by the court with or without notice and a
756 successor appointed whenever such action appears
757 to the court advisable.

758 (f) Upon the appointment and qualification of
759 the administrator or the administrator with the
760 will annexed or the qualification of the executor,
761 such temporary administrator or such officer shall
762 exhibit forthwith to the court an account of his
763 trust and deliver to the administrator, executor
764 or administrator with the will annexed all of the
765 estate of the deceased remaining in his hands.

* * * * *

"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

* * * * *

FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5730

STATE IMPACT	Potential Minimal Savings, see explanation below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Probate Courts, Judicial Department, Department of Children and Families

EXPLANATION OF ESTIMATES:

STATE IMPACT: Section 7 transfers the primary responsibility for the compensation of guardian ad litem in paternity claims from the Probate Court Administration Fund (PCAF) to the petitioner. Although in the bill the probate court must still pay if the petitioner is unable, to the extent that petitioners do have the ability to pay passage of the bill would result in potential minimal savings to the PCAF. The annual number of such paternity claims brought in probate court is small, but it should be noted that guardian ad litem are paid \$25/hr.

Section 15 eliminates a requirement that the Adoption Review Board send notices of hearings to the judge of probate and to all other involved parties in an adoption proceeding via certified mail. The Department of Children and Families will experience a minimal savings as these notices will be sent by regular mail.

Finally, there are a few sections in the bill which give the probate court concurrent jurisdiction with the Superior Court in specified areas. It is anticipated that these modifications would result in potential caseload reductions and savings to the Judicial

Department. With the exception of aforementioned sections, the majority of proposed changes in the bill are technical in nature and passage would not result in any additional fiscal impact to the state.

House Amendment "A", along with making a number of technical changes, eliminates the portion of the bill that gives the probate court concurrent jurisdiction with the Superior Court in matters regarding the reformation of various governing instruments that take advantage of marital deductions. It should be noted that a similar provision for concurrent jurisdiction in these matters is included in SHB 5468, "An Act Concerning Probate Courts", that is being considered this session. Passage of the bill as amended by House "A" results in no additional fiscal impact.

House Amendment "B" maintains current law regarding probate court notice requirements. The original bill proposed elimination of these certified mail requirements. Consequently, passage of the bill as amended by House "B" removes the potential minimal savings associated with this aspect of the bill.

* * * * *

OLR AMENDED BILL ANALYSIS

SHB 5730 (as amended by House "A" and "B")*

AN ACT CONCERNING PROBATE MATTERS

SUMMARY: This bill makes the following changes to the probate law:

1. eliminates the requirement for the court to appoint a three-judge panel to hear commitment cases concerning people with tuberculosis;
2. allows the probate court to authorize temporary administrators of decedents' estates to mortgage, instead of just sell, real estate;
3. requires a power of attorney to end whenever a conservator of the estate is appointed, rather than just in cases where the principal is disabled or incapacitated;

4. gives the probate court jurisdiction, concurrent with the Superior Court, to hear actions on probate bonds;
5. broadens the court's jurisdiction over certain fiduciary accounts;
6. prohibits a spouse eligible for an intestate share of a deceased spouse's estate from also claiming a statutory share of that estate;
7. specifies where the court may conduct its periodic review of children placed for services with the Department of Children and Families (DCF);
8. eliminates a requirement for the court to give public notice of a hearing on any application to compromise or settle a claim against a decedent's estate and instead allows the court to give any kind of notice;
9. specifies that wills executed between October 1, 1967 and January 1, 1997 continue to be revoked by the subsequent birth or adoption of a child or by marriage; and
10. makes technical changes.

*House Amendment "A" deletes the provision on reformation of wills, trusts, and other instruments and makes technical clarifying changes to the provision giving the probate court jurisdiction, concurrent with the Superior Court, to hear matters concerning probate bonds.

*House Amendment "B" deletes provisions that authorized the probate court to give any type of notice it deemed appropriate, instead of notice in the statutorily specified manner (typically by certified or registered mail) before hearings on (1) guardianship appointments for minors or people with mental retardation, (2) applications for the involuntary appointment of conservators, (3) applications for adoption before the Adoption Review Board, and (4) the admission of a decedent's will to probate or applications to administer the estate.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Commitment of People with Tuberculosis

By law, municipal health directors may issue a 96-hour emergency commitment order for the detention of a person in a medical facility if he has active infectious tuberculosis and his behavior poses a substantial likelihood of transmitting the disease to others. Upon issuing the order, the health director must immediately petition the probate court to determine whether to continue the commitment. The probate court administrator must appoint a three-judge panel to hold a hearing within 76 hours of when the health director issued the commitment order.

The bill eliminates the court's duty to appoint a three-judge panel in all cases and instead requires the panel only if the respondent or the court requests it. The bill specifies that if a motion is filed, the hearing must be held within 72 hours of the motion.

Fiduciary Accounts

By law, the probate court has jurisdiction over interim and final accounts of certain fiduciaries. The bill gives the probate court jurisdiction over a corporate trustee that maintains any office in the district. Current law provides jurisdiction over the account only if the trustee had its principal office in the district.

Current law gives the probate court jurisdiction over the accounts of trustees of deceased settlors or grantors (a settlor or grantor may create a trust). The bill provides that the court with jurisdiction over the estate of the decedent and the court located in the district where grantor or settlor resided immediately prior to death has jurisdiction. Under current law, only the former has jurisdiction.

The bill authorizes multiple trustees of a trust to file an accounting in the district where any one of them has any business, instead of his principal place of business.

Children Voluntarily Placed with the Department of Children and Families (DCF)

The law requires the probate court to periodically review the cases of children voluntarily placed for services with the DCF. The bill specifies that the review is to be conducted by the probate court where the child's parents or guardian live. It allows this probate court, upon the motion of any interested party and for cause, to transfer the case file to another probate court. The probate court of record must copy all documents in the file, certify them, and deliver them to the receiving court. The bill requires the court to use regular, rather than certified, return receipt requested, mail to inform the DCF commissioner before a hearing.

The bill requires a power of attorney to end whenever a conservator of the estate is appointed, rather than just in cases where the principal is disabled or incapacitated.

Notice of Insolvent Estates

The bill transfers from the fiduciary of an alleged insolvent estate to the probate court the duty to publish newspaper notice of the alleged insolvency and to notify interested parties of their right to be heard. The bill requires the newspaper notice to include the right of interested parties to be heard and the time, date, and place of the hearing. The bill requires the court to give interested parties such other notice as it directs.

BACKGROUND

Temporary Administrators

The probate court may appoint a temporary administrator upon the application of a creditor or other party interested in the estate of a deceased person to protect the property until the will is probated or an administrator is appointed.

Fiduciary

A fiduciary is a person, such as an executor, administrator, or trustee, with legal authority to act

on behalf of another person.

Spousal Share of an Estate

A spouse who is inadvertently left out of a deceased spouse's will because it was executed before marriage may elect to take an intestate share. The spouse can only take the intestate share if she was not purposefully left out of the will. The intestate share is that part of the estate that the spouse would get if the decedent had not left a will.

Related Bill

SHB 5468, favorably reported by the Judiciary Committee makes jurisdictional, financial, and procedural changes to the probate laws.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 39 Nay 0